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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,595	12/05/2001	Tetsuji Yamaguchi	380153-71	6579

7590 04/22/2004

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660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660

EXAMINER

PHAM, HOA Q

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,595

Applicant(s)

YAMAGUCHI, TETSUJI

Examiner

Hoa Q. Pham

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/18/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

With respect to the present abstract, the abstract should not exceed 150 words.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 13-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendrix et al (5,247,558) in view of Hoblik (3,582,222).

Regarding claims 13 and 22, Hendrix et al discloses a particle size analyzer comprises a flow cell (15, 315) having a top surface and bottom, an inlet (33,34) and outlet (33,34) formed on the top surface of the flow cell (figure 21), a separating element

Art Unit: 2877

(320) position within the flow cell between the inlet and the outlet and defining a flow path (see figure 1 and 21). Hendrix et al does not explicitly teach the use of a lid secured to the flow cell having an insertion hole and an inlet port in communication with inlet of flow and outlet port in communication with the outlet of the flow cell; however, such a feature is known in the art as taught by Hoblik. Hoblik, from the same field of endeavor, teaches the use of a lid (cover) (9) for covering the flow cell (1) (see figures 1 and 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include in Hendrix et al a lid (cover) as taught by Hoblik. The rationale for this modification would have arisen from the fact that using such lid would prevent the sample liquid splash from the top of the flow cell and prevent the dirt that may enter the flow cell.

Regarding claim 14, column 8, line 65 through column 9, line 5 of Hendrix et al, teaches that the plate (102) is a window and made by a well-known material so that the light from light source (40) passed through.

Regarding claim 15, see figure 21 of Hendrix et al for separating means (320), which extends from the top to the bottom.

Regarding claims 18-19, see figures 4-6 of Hendrix et al for first and second plates (102) and separate plates (100,101).

Regarding claims 16 and 20, figure 21 of Hendrix et al shows that the flow path is a U shape.

Regarding claims 17 and 21, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shape of the flow path from U shape to V shape because the device would function in the same manner.

Regarding claim 23, column 7, lines 18-25, column 8, lines 37-39, column 11, lines 1-8 of Hendrix et al teaches the use of a temperature sensor and heater for controlling the temperature of the flow cell. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the thermometer at the insertion hole for the same purpose of controlling the temperature of the sample cell.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Following references are relative to the present invention: Mayer et al (3,867,042), Trivedi et al (3,961,899), Meikle (3,419,722) and Shrewsbury (3,225,601).

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

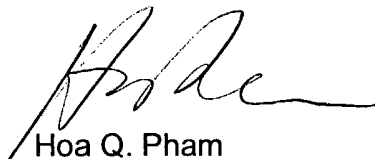
Art Unit: 2877

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa Q. Pham whose telephone number is (571) 272-2426. The examiner can normally be reached on 7:30AM to 6 PM, Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on (571) 272-2415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hoa Q. Pham

Primary Examiner

Art Unit 2877

HP

April 17, 2004